

FILED

2011 JAN 21 P 343  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA15  
15  
M

1 Laurence D. King (SBN 206423)  
 2 Linda M. Fong (SBN 124232)  
 2 KAPLAN FOX & KILSHEIMER LLP  
 3 350 Sansome Street, Suite 400  
 3 San Francisco, CA 94104  
 4 Telephone: 415-772-4700  
 4 Facsimile: 415-772-4707  
 5 Email: [lking@kaplanfox.com](mailto:lking@kaplanfox.com)  
 5 [lfong@kaplanfox.com](mailto:lfong@kaplanfox.com)

6 Attorneys for Plaintiff Dallas Faulkner

7 [Additional counsel listed on signature block] filing

9  
 10 UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

11 DALLAS FAULKNER, on behalf of  
 12 himself and all others similarly situated,

13 Plaintiff,

14 vs.

15 RICHARD G. WOLFORD, MARY R.  
 16 HENDERSON, TIMOTHY G. BRUER,  
 17 SAMUEL H. ARMACOST, TERENCE D.  
 18 MARTIN, JOE L. MORGAN, DAVID R.  
 19 WILLIAMS, VICTOR L. LUND,  
 20 SHARON L. MCCOLLAM, BLUE  
 MERGER SUB INC., BLUE  
 ACQUISITION GROUP, INC. and DEL  
 MONTE FOODS COMPANY,

21 Defendants.

CV11 CIVIL ACTION NO. 0326

RS

CLASS ACTION COMPLAINT FOR  
 VIOLATIONS OF THE FEDERAL  
 SECURITIES LAW

JURY TRIAL DEMANDED

22  
 23  
 24  
 25  
 26  
 27  
 28

## **CLASS ACTION COMPLAINT**

Plaintiff, by his attorneys, alleges the following upon information and belief, except for those allegations that pertain to plaintiff and his attorneys, which allegations are based on personal knowledge. Plaintiff's information and belief is based on, *inter alia*, the investigation conducted by his attorneys, including a review of the public filings of defendant Del Monte Foods Company ("Del Monte" or the "Company"), press releases, news articles and publicly available information concerning Del Monte:

1. Plaintiff brings this action individually and as a class action on behalf of the public shareholders of Del Monte in connection with the purchase of the Company by Kohlberg Kravis Roberts & Co. L.P. ("KKR"), Vestar Capital Partners ("Vestar") and Centerview Partners ("Centerview") (the "Sponsors") through their affiliates, Blue Acquisition Group, Inc. ("Parent") and Blue Merger Sub Inc., a wholly-owned subsidiary of Parent ("Merger Sub") (collectively, the "Sponsors"), for \$19.00 per share, pursuant to the Agreement and Plan of Merger by and among Merger Sub and Del Monte dated as of November 24, 2010 (the "Merger Agreement"). Plaintiff alleges that the sale of Del Monte to the Sponsors as contemplated by the Merger Agreement is unfair and inequitable to Del Monte's public stockholders and constitutes a breach of the fiduciary duties of the Del Monte's Board of Directors (hereinafter sometimes referred to as the "Board").

2. Pursuant to the Merger Agreement, each share of Del Monte common stock will be exchanged for \$19.00 in cash representing a total transaction value of approximately \$5.3 billion, including the assumption of approximately \$1.3 billion of net debt. Following completion of the acquisition, Merger Sub will merge with and into Del Monte and the Del Monte shares not acquired in the exchange offer will convert into the right to receive the same consideration as paid in the exchange offer (the "Proposed Acquisition").

1       3.     The Proposed Acquisition is subject to certain closing conditions, including approval  
2 of at least a majority of the outstanding shares of Del Monte common stock on a fully diluted basis,  
3 and is scheduled for a shareholder vote on February 15, 2011.

4       4.     The Proposed Acquisition as currently constituted is unfair to Del Monte  
5 shareholders because it does not adequately value the Company's future growth prospects, which  
6 will inure to Sponsors if the Proposed Acquisition is consummated.

8       5.     The recent historical averages for Del Monte's stock price demonstrate that the  
9 consideration being offered by Sponsors is unfair and inadequate.

10      6.     Indeed, the consideration to be paid to the class members is unconscionable, unfair  
11 and grossly inadequate because, among other things: (a) the intrinsic value of the stock of Del  
12 Monte is materially in excess of \$19.00 per share, giving due consideration to the possibilities of  
13 growth and profitability of Del Monte in light of its business, earnings and earnings power, present  
14 and future; (b) the \$19.00 per share price is inadequate and offers an inadequate premium to the  
15 public stockholders of Del Monte; and (c) the \$19.00 per share price is not the result of arm's-  
16 length negotiations but was fixed arbitrarily to "cap" the market price of Del Monte, as part of a  
17 plan for Sponsors to obtain complete ownership of Del Monte assets and business at the lowest  
18 possible price.

20      7.     Defendants have exacerbated their breaches of fiduciary duty by agreeing to lock-up  
21 the Proposed Acquisition with deal protection devices that preclude other bidders from making a  
22 successful competing offer for the Company. Specifically, defendants agreed to: (i) a "go-shop"  
23 provision permitting through January 8, 2011, a limited period of 45 days, for the Company to  
24 actively solicit potential bidders (the "Go-Shop Period"); (ii) a no-solicitation provision that  
25 prevents other buyers from having access to the Company's confidential information following the  
26 Go-Shop Period, which information is necessary to formulate a bid, except under extremely limited  
27  
28

1 circumstances; (iii) a matching rights provision that allows the Sponsors time to match any  
2 competing proposal in the event one is made. Specifically, following the conclusion of the Go-  
3 Shop Period, (a) within three (3) business days, the Company must notify Parent of any excluded  
4 parties (*i.e.*, parties that have during the Go-Shop Period provided the Company a written  
5 Acquisition Proposal that the Board determines in good faith is, or could reasonably be expected to  
6 result in, a superior proposal) and provide Parent with a written summary of the material terms and  
7 conditions of any Acquisition Proposal received from an excluded party; and (b) the Company must  
8 notify Parent within two (2) business days of any proposals or offers made. Finally, the Merger  
9 Agreement contains a provision that requires the Company to pay Parent a termination fee of \$60  
10 million as a result of the Company entering into an alternative acquisition agreement with a person  
11 who submits an acquisition proposal prior to the end of the Go-Shop Period. If the termination fee  
12 becomes payable under any other circumstances, the amount payable to Parent is \$120 million.  
13 These provisions substantially limit the Board of Director's ability to act with respect to  
14 investigating and pursuing superior proposals and alternatives including a sale of all or part of Del  
15 Monte.

16 8. On January 12, 2011, defendants filed a Definitive Proxy Statement (the "Proxy")  
17 with the Securities and Exchange Commission ("SEC") in connection with the Proposed  
18 Acquisition pursuant to which, *inter alia*, the Del Monte Board of Directors recommended that Del  
19 Monte stockholders vote "FOR" the approval and adoption of the Merger Agreement and in favor  
20 of the Proposed Acquisition at a shareholder vote to take place on February 15, 2011. In connection  
21 with the Proxy, Defendants have breached their duty of candor by failing to disclose material  
22 information (as described below) to Proxy shareholders necessary for them to determine whether to  
23 vote in favor of the Proposed Acquisition.

9. The Company's Board has breached its fiduciary duties to Del Monte shareholders by causing the Company to enter into the Merger Agreement that provides for the sale of Del Monte at an unfair price, and deprives Del Monte public shareholders of maximum value to which they are entitled.

10. Plaintiff and the class have suffered and will suffer irreparable injury unless defendants are enjoined from breaching their fiduciary duties and from carrying out the aforesaid plan and scheme. Plaintiff seeks to enjoin defendants from approving the Proposed Acquisition or, in the event the Proposed Acquisition is consummated, recovering damages resulting from defendants' violations of their fiduciary duties of loyalty, good faith, and due care.

## THE PARTIES

11. Plaintiff has been a holder of Del Monte common stock since prior to the transactions herein complained of and continues to hold Del Monte common stock as of this date.

12. Del Monte is a corporation duly organized and existing under the laws of the State of Delaware with its principal offices located at One Market @ The Landmark, San Francisco, California 94105. Del Monte together with its subsidiaries, produces, distributes, and markets branded pet products and food products for the United States retail market. It operates in two segments, Pet Products and Consumer Products. The Pet Products segment manufactures, markets, and sells branded and private label dry and wet pet food, as well as pet snacks; and produces and distributes private label pet products and food products. The Consumer Products segment manufactures, markets, and sells branded and private label shelf-stable products, including fruit, vegetable, tomato, and broth products. The Company sells its products through direct sales force and independent food brokers to grocery, club store, supercenter, and mass merchandiser customers; pet specialty, dollar stores, drug stores, convenience stores, military, food ingredients, and private label customers; and the foodservice industry. Del Monte was founded in 1916.

1       13.    Defendant Richard G. Wolford ("Wolford") is Chairman of the Board, President,  
2 Chief Executive Officer and a director of Del Monte. Defendant Wolford joined the Company as  
3 Chief Executive Officer and a director in April 1997. He was elected President of Del Monte in  
4 February 1998 and was elected Chairman of the Board in May 2000.

5       14.    Defendant Mary R. Henderson ("Henderson") is and has been a director of Del  
6 Monte since 2002.

8       15.    Defendant Timothy G. Bruer ("Bruer") is and has been a director of Del Monte since  
9 1997. Bruer has served as Chief Executive Officer of Genisoy Food Co. Inc., a provider of soy  
10 protein products and sports nutrition, since April 2005.

11       16.    Defendant Samuel H. Armacost ("Armacost") is and has been a director of Del  
12 Monte since 2002.

13       17.    Defendant Terence D. Martin ("Martin") is and has been a director of Del Monte  
14 since 2002.

16       18.    Defendant Joe L. Morgan ("Morgan") is and has been a director of Del Monte since  
17 2002. Defendant Morgan has been a baseball broadcaster and analyst for ABC, NBC and ESPN  
18 since 1985.

19       19.    Defendant David R. Williams ("Williams") is and has been a director of Del Monte  
20 since 2002.

21       20.    Defendant Victor L. Lund ("Lund") is and has been a director of Del Monte since  
22 2005. Defendant Lund currently serves as non-executive Chairman of DemandTec, a demand  
23 forecasting software company, a position he has held since 2006.

25       21.    Defendant Sharon L. McCollam ("McCollam") is and has been a director of Del  
26 Monte since 2007. Defendant McCollam has served as Executive Vice President, Chief Operating  
27

and Chief Financial Officer of Williams-Sonoma, Inc., a specialty retailer of home furnishings, since July 2006.

22. The individual defendants in ¶¶13–21 constitute the Board of Del Monte (the “Individual Defendants”) and, by reason of their corporate directorships and executive positions, stand in a fiduciary position relative to the Company’s public shareholders. Their fiduciary duties, at all times relevant herein, required them to exercise their best judgment, and to act in a prudent manner, and in the best interest of the Company’s minority shareholders. Said defendants owe the public shareholders of Del Monte the highest duty of good faith, fair dealing, due care, loyalty, and full candid and adequate disclosure.

23. Defendant Parent is a Delaware corporation and affiliated and/or wholly owned by the Sponsors formed for the purpose of acquiring Del Monte.

24. Defendant Merger Sub is a Delaware corporation and a wholly owned subsidiary of Parent formed for the purpose of acquiring Del Monte.

25. Defendants Parent and Merger Sub are named herein as aiders and abettors to the Individual Defendants' breaches of fiduciary duty.

26. Del Monte, the Individual Defendants and the Sponsors are collectively referred to herein as "defendants."

27. Each defendant herein is sued individually or as a conspirator or aider and abettor, as well as in his capacity as an officer and/or director of the Company, and the liability of each arises from the fact that he or she has engaged in all or part of the unlawful acts, plans, schemes, or transactions complained of herein.

## **CLASS ACTION ALLEGATIONS**

28. Plaintiff brings this action on his own behalf and as a class action, on behalf of all shareholders of defendant Del Monte (except defendants herein and any person, firm, trust,

1 corporation or other entity related to or affiliated with any of the defendants) or their successors in  
2 interest, who have been or will be adversely affected by the conduct of defendants alleged herein.

3 29. This action is properly maintainable as a class action.

4 30. The class of shareholders for whose benefit this action is brought is so numerous that  
5 joinder of all class members is impracticable. There are approximately 194 million shares of  
6 common stock outstanding owned by thousands of shareholders of record scattered throughout the  
7 United States.

8 31. There are questions of law and fact which are common to members of the class. The  
9 common questions include, *inter alia*, the following:

10 a. whether the Del Monte directors have breached their fiduciary duties to plaintiff  
11 and the class in connection with the Merger Agreement and related transactions;  
12 and

13 b. whether plaintiff and the other members of the class will be damaged irreparably  
14 by defendants' failure to take action designed to obtain the best value for the  
15 public stockholders' interest in Del Monte.

16 32. Plaintiff is committed to prosecuting this action and has retained competent counsel  
17 experienced in litigation of this nature. The claims of plaintiff are typical of the claims of the other  
18 members of the class and plaintiff has the same interests as the other members of the class.  
19 Accordingly, plaintiff will fairly and adequately represent the class.

20 33. The prosecution of separate actions by individual members of the class would create  
21 a risk of inconsistent or varying adjudications with respect to individual members of the class and  
22 establish incompatible standards of conduct for the party opposing the class.

23 34. Defendants have acted and are about to act on grounds generally applicable to the  
24 class, thereby making appropriate final injunctive relief with respect to the class as a whole.  
25

## **SUBSTANTIVE ALLEGATIONS**

## *Background*

35. Del Monte together with its subsidiaries, produces, distributes, and markets branded pet products and food products for the United States retail market. It operates in two segments, Pet Products and Consumer Products. The Pet Products segment manufactures, markets, and sells branded and private label dry and wet pet food, as well as pet snacks; and produces and distributes private label pet products and food products. The Consumer Products segment manufactures, markets, and sells branded and private label shelf-stable products, including fruit, vegetable, tomato, and broth products. The Company sells its products through direct sales force and independent food brokers to grocery, club store, supercenter, and mass merchandiser customers; pet specialty, dollar stores, drug stores, convenience stores, military, food ingredients, and private label customers; and the foodservice industry. Del Monte was founded in 1916.

### ***The Proposed Acquisition***

36. On November 25, 2010, Del Monte and the Sponsors jointly issued a press release entitled, "KKR, VESTAR AND CENTERVIEW ENTER INTO AGREEMENT TO ACQUIRE DEL MONTE FOODS." The release stated in relevant part:

Del Monte Foods Company (NYSE:[DLM](#) - [News](#)) and an investor group led by funds affiliated with Kohlberg Kravis Roberts & Co. L.P. (“KKR”), Vestar Capital Partners (“Vestar”) and Centerview Partners (“Centerview”) – collectively the “Sponsors” – today announced that they have signed a definitive agreement under which the Sponsors will acquire Del Monte for \$19.00 per share in cash.

The transaction, which was unanimously approved by Del Monte's board of directors, is valued at approximately \$5.3 billion, including the assumption of approximately \$1.3 billion in net debt. This price represents a premium of approximately 40 percent over Del Monte's average closing share price during the past three months prior to November 18, 2010, when market rumors of a transaction began, and is also higher than any price the Company's stock has ever achieved.

1        "This transaction delivers substantial shareholder value and is a clear  
 2        endorsement of Del Monte's strategic success and effective execution.  
 3        The hard work and dedication of our talented team has helped to  
 4        transform Del Monte from a \$1 billion consumer foods business into a  
 5        branded pet and consumer products company with more than \$3.7 billion  
 6        in revenues," said Richard G. Wolford, Chairman and CEO of Del Monte  
 7        Foods. "This transaction will enable our Company to continue to  
 8        successfully grow, building on the foundation our team has put into place.  
 9        We are excited about the ability to deliver substantial returns to our  
 10      shareholders, as well as great prospects for Del Monte employees,  
 11      customers and consumers."

12      37. Pursuant to the Merger Agreement, each share of Company common stock accepted  
 13      by Merger Sub will be exchanged for \$19.00 in cash.

14      38. Barclays Capital Inc. ("Barclays") served as one of the Company's financial advisors  
 15      and provided a fairness opinion in connection with the Proposed Acquisition. Perella Weinberg  
 16      Partners LP ("Perella") also served as a financial advisor and provided a fairness opinion in  
 17      connection with the Proposed Acquisition. Gibson Dunn & Crutcher LLP served as legal advisor to  
 18      the Company in connection with the Proposed Acquisition.

19      39. Centerview Partners acted as lead financial advisor to the Sponsors in the Proposed  
 20      Acquisition. Bank of America Merrill Lynch, J.P. Morgan Securities and Barclays also advised on  
 21      the Proposed Acquisition. The Sponsors' lead legal advisor was Simpson Thacher & Bartlett LLP.

22      40. The Sponsors have secured committed debt financing from Bank of America Merrill  
 23      Lynch, Barclays, JPMorgan Chase, and KKR Capital Markets LLC, an affiliate of KKR.

24      41. The Proposed Acquisition is subject to satisfaction or waiver of a number of  
 25      conditions set forth in the Merger Agreement, including the expiration or termination of applicable  
 26      waiting periods under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 and the approval  
 27      of at least a majority of the shares of Del Monte common stock.

28      42. In addition, pursuant to the Merger Agreement, Del Monte had the right to actively  
 29      solicit superior proposals from third parties for a period of 45 days continuing through January 8,

1 2011. Del Monte has stated that there were no superior proposals that came about as a result of the  
2 Go-Shop Period.

3 43. The transaction is scheduled for a shareholder vote on February 15, 2011. The  
4 Proposed Acquisition is subject to approval by Del Monte shareholders, regulatory approval, and  
5 certain other closing conditions.  
6

7 44. The Proposed Acquisition serves no legitimate business purpose of Del Monte but  
8 rather is an attempt by defendants to enable Sponsors to benefit unfairly from the transaction at the  
9 expense of Del Monte's public shareholders. The Proposed Acquisition will, for a grossly  
10 inadequate consideration, deny plaintiff and the other members of the class their right to share  
11 proportionately in the future success of Del Monte and its valuable assets, while permitting  
12 Sponsors to reap huge benefits from the transaction.  
13

14 45. The consideration to be paid to the class members is unconscionable, unfair and  
15 grossly inadequate because, among other things: (a) the intrinsic value of the stock of Del Monte is  
16 materially in excess of \$19.00 per share, giving due consideration to the possibilities of growth and  
17 profitability of Del Monte in light of its business, earnings and earnings power, present and future;  
18 (b) the \$19.00 per share price is inadequate and offers an inadequate premium to the public  
19 stockholders of Del Monte; and (c) the \$19.00 per share price is not the result of arm's-length  
20 negotiations but was fixed arbitrarily to "cap" the market price of Del Monte, as part of a plan for  
21 Sponsors to obtain complete ownership of Del Monte assets and business at the lowest possible  
22 price.  
23

24 46. Indeed, on December 2, 2010, the Company reported increased income for the  
25 second quarter fiscal 2011 results. Specifically, the Company's operating income increased to  
26 \$148.0 million compared to \$140.6 million last year, an increase of 5.3%. The Company further  
27 reported that income from continuing operations was \$81.1 million compared to \$62.6 million last  
28

1 year, an increase of 29.6%. Moreover, earnings per share ("EPS") from continuing operations was  
2 \$0.41 compared to \$0.31 EPS last year. The income increases demonstrate that the consideration  
3 being offered by Sponsors is unfair and inadequate. The consideration being offered does not  
4 reflect the Company's intrinsic value and prospects for growth.

5 47. On December 17, 2010, Del Monte announced that its Board of Directors declared a  
6 cash dividend on its common stock of \$0.09 per share. The dividend is payable on February 3, 2011  
7 to stockholders of record as of the close of business on January 20, 2011.

8 48. In addition to agreeing to a sale of the Company at an unfair price, the Individual  
9 Defendants agreed to onerous deal protection devices in breach of their fiduciary duties to Del  
10 Monte shareholders, which have prevented a superior offer from being made for the Company.  
11 Specifically, defendants agreed to: (i) a Go-Shop Period provision permitting through January 8,  
12 2011, a limited period of 45 days, for the Company to actively solicit potential bidders; (ii) a no-  
13 solicitation provision that prevents other buyers from having access to the Company's confidential  
14 information following the Go-Shop Period, which information is necessary to formulate a bid,  
15 except under extremely limited circumstances; and (iii) a matching rights provision that allows the  
16 Sponsors time to match any competing proposal in the event one is made. Specifically, following  
17 the conclusion of the Go-Shop Period, (a) within three (3) business days, the Company must notify  
18 Parent of any excluded parties (*i.e.*, parties that have provided the Company during the Go-Shop  
19 Period a written Acquisition Proposal that the Board determines in good faith is, or could  
20 reasonably be expected to result in, a superior proposal) and provide Parent with a written summary  
21 of the material terms and conditions of any Acquisition Proposal received from an excluded party;  
22 and (b) the Company must notify Parent within two (2) business days of any proposals or offers  
23 made. Finally, the Merger Agreement contains a provision that requires the Company to pay Parent  
24 a termination fee of \$60 million as a result of the Company entering into an alternative acquisition  
25  
26  
27  
28

1 agreement with a person who submits an Acquisition Proposal prior to the end of the Go-Shop  
 2 Period. If the termination fee becomes payable under any other circumstances, the amount payable  
 3 to Parent is \$120 million. These provisions substantially limit the Board of Director's ability to act  
 4 with respect to investigating and pursuing superior proposals and alternatives including a sale of all  
 5 or part of Del Monte.

6 49. Moreover, the Go-Shop Period provision is a paradigm in form over substance. In  
 7 agreeing to the Merger Agreement prior to adequately shopping the Company, the Individual  
 8 Defendants have breached their fiduciary obligations.

9 50. The terms of the Merger Agreement are structured to ensure that Sponsors, and only  
 10 Sponsors, ultimately acquire Del Monte, regardless of whether such terms are designed and/or serve  
 11 to maximize shareholder value.

12 51. The Termination Fee and expense obligation are deterrents to other potential bidders  
 13 and provide defendants with an unearned windfall at the expense of the Company's public  
 14 shareholders if a superior bid emerges. Accordingly, the terms of the Merger Agreement  
 15 substantially limit the Board's ability to act with respect to investigating and pursuing superior  
 16 proposals and alternatives including a sale of all or part of Del Monte.

17 ***Barclays, the Company's Financial Advisor, Is Conflicted***

18 52. Barclays is acting as financial advisor to the Company in connection with the  
 19 Proposed Acquisition, including in connection with the Go-Shop Period. During January 2010,  
 20 Barclays contacted the Company on behalf of a private equity firm, Bidder A, a potential acquirer,  
 21 regarding a potential transaction. In response, the Company, with the assistance of Barclays,  
 22 simultaneously contacted five private equity firms, including KKR and Bidder A, to assess their  
 23 current interest in a transaction. The Company continued to utilize Barclays as its financial advisor  
 24

even after recognizing potential conflicts of interest inherent in Barclays representing potential bidders.

53. As compensation for its services in connection with the Proposed Acquisition, the Company paid Barclays Capital \$2,500,000 upon the delivery of Barclays' fairness opinion. Additional compensation of \$23,500,000 will be payable on completion of the Proposed Acquisition. Barclay has performed various investment banking and financial services for the Company, the Sponsors and their respective affiliates and portfolio companies in the past, and is likely to perform such services in the future, and has received, and is likely to receive, fees for such services. Specifically, Barclays has: (i) acted as co-lead arranger on the Company's current \$1.2 billion senior secured credit facility, (ii) acted as joint book runner on the Company's \$450 million issuance of 7.5% senior subordinated notes in 2009, and (iii) acted as joint dealer manager and solicitation agent on the Company's tender offer and consent solicitation for the Company's 8 5/8% senior subordinated notes in 2009. As a result of the contingent portion of the fee, in addition to other remuneration Barclays has received, shareholders may not be able to rely on Barclays to render an unbiased, disinterested opinion, nor should the Individual Defendants have done so.

54. Further, Barclays and certain of its affiliates may participate in the financing necessary for the Proposed Acquisition, for which services Barclays and its affiliates will receive significant compensation. In this regard, it was not in Barclays' interest for a strategic buyer to acquire the Company since a strategic buyer does not generally leverage its balance sheet to result in very profitable debt funding fees for Barclays.

## ***The Lucrative Change- of- Control Packages to Directors and Executive Officers Create a Conflict***

55. The Individual Defendants, in addition to executive officers of the Company, have lucrative change-in-control arrangements. In addition to proceeds related to outstanding shares currently held by the Company's executive officers, assuming completion of the Proposed

1 Acquisition on March 31, 2011, approximate proceeds related to outstanding and unexercised  
 2 options, vested (*i.e.*, options that vest according to their standard terms; not options that become  
 3 vested by operation of the merger) or unvested with respect to the Company's executive officers are  
 4 as follows:

5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576	577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594	595	596	597	598	599	600	601	602	603	604	605	606	607	608	609	610	611	612	613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630	631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660	661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681	682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702	703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723	724	725	726	727	728	729	730	731	732	733	734	735	736	737	738	739	740	741	742	743	744	745	746	747	748	749	750	751	752	753	754	755	756	757	758	759	760	761	762	763	764	765	766	767	768	769	770	771	772	773	774	775	776	777	778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798	799	800	801	802	803	804	805	806	807	808	809	810	811	812	813	814	815	816	817	818	819	820	821	822	823	824	825	826	827	828	829	830	831	832	833	834	835	836	837	838	839	840	841	842	843	844	845	846	847	848	849	850	851	852	853	854	855	856	857	858	859	860	861	862	863	864	865	866	867	868	869	870	871	872	873	874	875	876	877	878	879	880	881	882	883	884	885	886	887	888	889	890	891	892	893	894	895	896	897	898	899	900	901	902	903	904	905	906	907	908	909	910	911	912	913	914	915	916	917	918	919	920	921	922	923	924	925	926	927	928	929	930	931	932	933	934	935	936	937	938	939	940	941	942	943	944	945	946	947	948	949	950	951	952	953	954	955	956	957	958	959	960	961	962	963	964	965	966	967	968	969	970	971	972	973	974	975	976	977	978	979	980	981	982	983	984	985	986	987	988	989	990	991	992	993	994	995	996	997	998	999	1000	1001	1002	1003	1004	1005	1006	1007	1008	1009	1010	1011	1012	1013	1014	1015	1016	1017	1018	1019	1020	1021	1022	1023	1024	1025	1026	1027	1028	1029	1030	1031	1032	1033	1034	1035	1036	1037	1038	1039	1040	1041	1042	1043	1044	1045	1046	1047	1048	1049	1050	1051	1052	1053	1054	1055	1056	1057	1058	1059	1060	1061	1062	1063	1064	1065	1066	1067	1068	1069	1070	1071	1072	1073	1074	1075	1076	1077	1078	1079	1080	1081	1082	1083	1084	1085	1086	1087	1088	1089	1090	1091	1092	1093	1094	1095	1096	1097	1098	1099	1100	1101	1102	1103	1104	1105	1106	1107	1108	1109	1110	1111	1112	1113	1114	1115	1116	1117	1118	1119	1120	1121	1122	1123	1124	1125	1126	1127	1128	1129	1130	1131	1132	1133	1134	1135	1136	1137	1138	1139	1140	1141	1142	1143	1144	1145	1146	1147	1148	1149	1150	1151	1152	1153	1154	1155	1156	1157	1158	1159	1160	1161	1162	1163	1164	1165	1166	1167	1168	1169	1170	1171	1172	1173	1174	1175	1176	1177	1178	1179	1180	1181	1182	1183	1184	1185	1186	1187	1188	1189	1190	1191	1192	1193	1194	1195	1196	1197	1198	1199	1200	1201	1202	1203	1204	1205	1206	1207	1208	1209	1210	1211	1212	1213	1214	1215	1216	1217	1218	1219	1220	1221	1222	1223	1224	1225	1226	1227	1228	1229	1230	1231	1232	1233	1234	1235	1236	1237	1238	1239	1240	1241	1242	1243	1244	1245	1246	1247	1248	1249	1250	1251	1252	1253	1254	1255	1256	1257	1258	1259	1260	1261	1262	1263	1264	1265	1266	1267	1268	1269	1270	1271	1272	1273	1274	1275	1276	1277	1278	1279	1280	1281	1282	1283	1284	1285	1286	1287	1288	1289	1290	1291	1292	1293	1294	1295	1296	1297	1298	1299	1300	1301	1302	1303	1304	1305	1306	1307	1308	1309	1310	1311	1312	1313	1314	1315	1316	1317	1318	1319	1320	1321	1322	1323	1324	1325	1326	1327	1328	1329	1330	1331	1332	1333	1334	1335	1336	1337	1338	1339	1340	1341	1342	1343	1344	1345	1346	1347	1348	1349	1350	1351	1352	1353	1354	1355	1356	1357	1358	1359	1360	1361	1362	1363	1364	1365	1366	1367	1368

1	James G. Potter (Senior Vice President, General Counsel and Secretary)	2,909,535	1,185,415	4,094,950
---	---	-----------	-----------	-----------

3  
4 56. Assuming completion of the Proposed Acquisition on March 31, 2011, the  
5 approximate proceeds related to performance share units that would become vested with respect to  
6 the Company's executive officers are as follows:

7	Executive	Proceeds from Performance Share Units (\$)
10	Richard G. Wolford	\$ 16,524,300
11	David L. Meyers	3,545,400
12	Nils Lommerin	5,611,650
13	Timothy A. Cole	3,023,850
14	David W. Allen	2,334,150
15	Larry E. Bodner	2,163,150
16	Richard W. Muto	1,482,000
17	Marc L. Brown	1,573,200
18	Richard L. French	1,496,250
19	William D. Pearce	1,464,900
20	James G. Potter	1,490,550

21 57. Assuming completion of the Proposed Acquisition on March 31, 2011, the  
22 approximate proceeds related to performance accelerated restricted stock units that would become  
23 vested with respect to the Company's executive officers are as follows:

24	Executive	Proceeds from Performance Accelerated Restricted Stock Units (\$)
26	Richard G. Wolford	\$ 3,382,000
27	David L. Meyers	735,300
28	Nils Lommerin	1,225,500
	Timothy A. Cole	653,600

<b>David W. Allen</b>	442,700
<b>Larry E. Bodner</b>	442,700
<b>Richard W. Muto</b>	343,900
<b>Marc L. Brown</b>	349,600
<b>Richard L. French</b>	326,800
<b>William D. Pearce</b>	423,700
<b>James G. Potter</b>	326,800

58. Assuming completion of the Proposed Acquisition on March 31, 2011, the approximate proceeds related to restricted stock units that would become vested with respect to the Company's executive officers are as follows:

<b>Executive</b>		<b>Proceeds from Restricted Stock Units</b>
	<b>(\$)</b>	
Richard G. Wolford	\$	1,305,300
David L. Meyers		256,500
Nils Lommerin		490,200
Timothy A. Cole		233,700
David W. Allen		212,800
Larry E. Bodner		212,800
Richard W. Muto		142,500
Marc L. Brown		106,400
Richard L. French		125,400
William D. Pearce		121,600
James G. Potter		127,300

59. Assuming completion of the Proposed Acquisition on March 31, 2011, the approximate proceeds related to deferred stock units that would become vested with respect to the Company's executive officers are as follows:

Executive	Proceeds from Deferred Stock Units (\$)
Richard G. Wolford	\$ ---
David L. Meyers	329,476
Nils Lommerin	406,819
Timothy A. Cole	113,092
David W. Allen	128,969
Larry E. Bodner	22,023
Richard W. Muto	---
Marc L. Brown	---
Richard L. French	---
William D. Pearce	---
James G. Potter	---

60. In addition to proceeds related to outstanding shares currently held by the Company's non-employee directors, assuming completion of the Proposed Acquisition on March 31, 2011, the approximate proceeds related to outstanding and unexercised vested options (there are no unvested options since the Company has not granted options to non-employee directors in recent years and all previously granted options became vested no later than the end of the Company's 2008 fiscal year based on a director's service prior to that time) with respect to the Company's non-employee directors are as follows:

Non-Employee Director	Proceeds from Vested Options (\$)
Samuel H. Armacost	\$ 291,300
Timothy G. Bruer	470,025
Mary R. (Nina) Henderson	291,300
Victor L. Lund	168,750
Terence D. Martin	291,300
Sharon M. McCollam	---
Joe L. Morgan	291,300
David R. Williams	291,300

1  
2 61. Assuming completion of the Proposed Acquisition on March 31, 2011, the  
3 approximate proceeds related to restricted stock units that would become vested with respect to the  
4 Company's non-employee directors are as follows:

5 6 7 8 <u>Non-Employee Director</u>	9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 Proceeds from Restricted Stock Units (\$)
Samuel H. Armacost	\$ 353,248
Timothy G. Bruer	353,248
Mary R. (Nina) Henderson	353,248
Victor L. Lund	353,248
Terence D. Martin	353,248
Sharon M. McCollam	353,248
Joe L. Morgan	353,248
David R. Williams	353,248

14 62. The table below provides estimates of what each executive would receive upon an  
15 involuntary termination in connection with the Proposed Acquisition. For comparison purposes, the  
16 table below also provides an estimate of what each executive would receive outside of the context  
17 of a change in control and the difference between these benefits and the change in control benefits.

19 20 21 22 <u>Executive</u>	23 24 25 26 27 28 Severance Upon Termination in Connection with a Change in Control (\$)(1)	23 24 25 26 27 28 Severance Upon Termination without a Change in Control (\$)(1)(2)(3)	23 24 25 26 27 28 Difference in Total Benefits (\$)
Richard G. Wolford			
Multiple of Base Salary and Target AIP Award	\$ 7,095,271	(4) \$ 4,746,001	
Perquisite Allowance	84,000	84,000	
Pro-Rata Target AIP Award	1,139,417	1,139,417	

1	Health and				
2	Welfare Benefit				
3	Continuation	70,227	70,227		
4	Total				
5		8,388,915	6,039,645	\$	2,349,270
6	David L. Meyers				
7	Multiple of Base				
8	Salary and				
9	Target/Prior	(5)	(5)		
10	AIP Award	1,887,000	2,457,736		
11	Perquisite				
12	Allowance	36,000	36,000		
13	Pro-rata Target				
14	AIP Award	352,625	352,625		
15	Health and				
16	Welfare Benefit				
17	Continuation	108,445	108,445		
18	Enhanced				
19	Benefits under				
20	the Additional				
21	Benefits Plan				
22	— Qualified				
23	Pension Plan				
24	Portion	250,000	250,000		
25	Total				
26		2,634,070	3,204,806		(570,736)
27	Nils Lommerin				
28	Multiple of Base				
29	Salary and				
30	Target AIP				
31	Award	2,358,000	1,768,500		
32	Perquisite				
33	Allowance	54,000	54,000		
34	Pro-rata Target				
35	AIP Award	473,666	473,666		
36	Health and				
37	Welfare Benefit				
38	Continuation	20,946	20,946		
39	Total				
40		2,906,612	2,317,112		589,500

2	Timothy A. Cole			
3	Multiple of Base Salary and Target AIP Award	1,621,800	1,216,350	
4	Perquisite Allowance	54,000	54,000	
5	Pro-rata Target AIP Award	303,275	303,275	
6	Health and Welfare Benefit Continuation	19,623	19,623	
	Total	1,998,698	1,593,248	405,450

7	Richard L. French			
8	Multiple of Base Salary and Target AIP Award	1,085,000	813,750	
9	Perquisite Allowance	45,000	45,000	
10	Pro-rata Target AIP Award	172,608	172,608	
11	Health and Welfare Benefit Continuation	18,682	18,682	
12	Total	1,321,290	1,050,040	271,250

13	Richard W. Muto			
14	Multiple of Base Salary and Target AIP Award	1,251,250	938,438	
15	Perquisite Allowance	54,000	54,000	
16	Pro-rata Target AIP Award	204,531	204,531	
17	Health and Welfare Benefit Continuation	9,041	9,041	
18	Total	1,518,822	1,206,010	312,812

19	James G. Potter			
20	Multiple of Base Salary and Target AIP Award	1,240,000	930,000	
21	Perquisite Allowance	45,000	45,000	
22	Pro-rata Target AIP Award	199,834	199,834	
23	Health and Welfare Benefit Continuation	19,053	19,053	
24	Total	1,503,887	1,193,887	310,000

63. The table below provides estimates of what each executive would receive upon an involuntary termination in connection with a change in control or the Proposed Acquisition. For comparison purposes, the table below also provides an estimate of what each executive would receive outside of the context of a change in control and the difference between these benefits and the change-in-control benefits.

Executive	Severance Upon Termination in Connection with a Change in Control (\$)(1)	Severance Upon Termination without a Change in Control (\$)(1)(2)	Difference in Total Benefits (\$)
David W. Allen			
Multiple of Base Salary and Target AIP Award	\$ 1,430,000	\$ 1,072,500	
Pro-rata Target AIP Award	248,958	248,958	
Health and Welfare Benefit Continuation	19,350	19,350	
Total	1,698,308	1,340,808	\$ 357,500
Larry E. Bodner			
Multiple of Base Salary and Target AIP Award	1,430,000	1,072,500	
Pro-rata Target AIP Award	248,958	248,958	
Health and Welfare Benefit Continuation	23,339	23,339	
Total	1,702,297	1,344,797	357,500
Marc L. Brown			
Multiple of Base Salary and Target AIP Award	1,041,600	781,200	
Pro-rata Target AIP Award	168,300	168,300	
Health and Welfare Benefit Continuation	18,576	18,576	
Total	1,228,476	968,076	260,400
William D. Pearce			
Multiple of Base Salary and Target AIP Award	1,378,000	1,033,500	
Pro-rata Target AIP Award	241,250	241,250	
Health and Welfare Benefit Continuation	19,231	19,231	
Total	1,638,481	1,293,981	344,500

1       64. Each executive officer of the Company may receive a tax gross-up in the event that  
 2 payments made in connection with the Proposed Acquisition become subject to taxation under  
 3 Section 280G and Section 4999 of the Internal Revenue Code (referred to as the "280G gross-up").  
 4 Certain executive officers are only entitled to receive the 280G gross-up in the event that payments  
 5 exceed the level at which any payment is treated as an "excess parachute payment" under  
 6 Section 280G by 5% or more.  
 7

8       65. The table below includes estimated 280G gross-up payments, based on the equity  
 9 acceleration alone (and not taking into consideration potential severance benefits) in connection  
 10 with the Proposed Acquisition, and also based on both the equity acceleration and taking into  
 11 consideration potential severance benefits.

14 <b>Executive</b>	13 <b>Estimated 280G Gross-Up (if entitled) on Equity Only (\$)</b>	13 <b>Estimated 280G Gross-Up (if entitled) on Severance and Equity (\$)</b>
15       Richard G. Wolford	15       \$ -	15       \$ -
16       David L. Meyers	16       -	16       -
17       Nils Lommerin	17       -	17       3,988,443
18       Timothy A. Cole	18       -	18       2,289,861
19       David W. Allen	19       -	19       1,921,273
20       Larry E. Bodner	20       -	20       2,033,374
21       Richard W. Muto	21       -	21       1,414,109
22       Marc L. Brown	22       -	22       1,209,948
23       Richard L. French	23       -	23       1,239,938
24       William D. Pearce	24       -	24       1,531,982
25       James G. Potter	25       -	25       1,385,507

26       66. Immediately prior to the effective time of the Proposed Acquisition, all amounts held  
 27 in participant accounts and denominated in Company common stock under Del Monte  
 28

1 Corporation's AIP Deferred Compensation Plan or the Company's 2003 or 2005 Non-Employee  
 2 Director Deferred Compensation Plans (the "Deferred Stock Units"), shall become fully vested  
 3 contingent upon the effective time of the Merger, and unless otherwise agreed by Parent and an  
 4 individual participant in one or more of such plans, be converted into an obligation of the Company  
 5 to pay cash with a value equal to the product of \$19.00 and the number of deferred stock units held  
 6 in such participant accounts.  
 7

8       67. Executives are otherwise entitled to their accrued benefits under the Company's  
 9 retirement and deferred compensation plans pursuant to the terms of those plans. None of those  
 10 plans provide for additional benefits on account of the occurrence of the merger. Pursuant to the  
 11 terms of the Merger Agreement, each of the Company's 2003 and 2005 Non-Employee Director  
 12 Deferred Compensation Plans, the Del Monte Corporation Executive Deferred Compensation Plan,  
 13 effective December 20, 2002 (as amended and restated as of December 31, 2004), the Deferred  
 14 Compensation Plan, effective October 1, 2009 and the elective deferral account of Del Monte  
 15 Corporation's AIP Deferred Compensation Plan (i.e., the portion associated with amounts deferred  
 16 and therefore contributed by the executive, as opposed to Company match amounts) will be  
 17 terminated prior to the occurrence of the merger in accordance with the provisions of Treas. Reg.  
 18 1.409A-3(j)(ix)(B) and all obligations thereunder will be paid at or before the occurrence of the  
 19 Merger.  
 20

21       68. Assuming completion of the Proposed Acquisition on March 31, 2011, the  
 22 approximate proceeds related to the deferred compensation plans being terminated and paid out  
 23 before the occurrence of the Merger with respect to the Company's executive officers are as follows:  
 24  
 25  
 26  
 27  
 28

<u>Executive</u>	Proceeds from Deferred Compensation Plans (\$)
Richard G. Wolford	\$ 5,047,629
David L. Meyers (1)	3,938,305
Nils Lommerin (1)	5,467,516
Timothy A. Cole	1,064,812
David W. Allen	999,758
Larry E. Bodner	132,367
Richard W. Muto (1)	454,926
Marc L. Brown	—
Richard L. French	—
William D. Pearce	—
James G. Potter	497,814

69. Assuming completion of the Merger on March 31, 2011, the approximate proceeds related to the deferred compensation plans being terminated and paid out before the occurrence of the Merger with respect to the Company's non-employee directors are as follows:

<u>Non-Employee Director</u>	Proceeds from Deferred Compensation Plans (\$)(1)
Samuel H. Armacost	\$ 729,660
Timothy G. Bruer	—
Mary R. (Nina) Henderson	822,092
Victor L. Lund	602,993

1	Terence D. Martin	729,660
2	Sharon M. McCollam	902,046
3	Joe L. Morgan	—
4	David R. Williams	—

5       70.    Based upon option exercises after December 15, 2010 but before January 1, 2011,  
 6 the approximate “make-whole” payments to be made following completion of the Merger to the  
 7 Company's executive officers are as follows:  
 8

9	Executive	Make-Whole Payment (\$)
10	Richard G. Wolford	\$ 656,040
11	David L. Meyers	12,654
12	Nils Lommerin	224,077
13	Timothy A. Cole	—
14	David W. Allen	80,812
15	Larry E. Bodner	45,085
16	Richard W. Muto	27,337
17	Marc L. Brown	7,378
18	Richard L. French	—
19	William D. Pearce	—
20	James G. Potter	—

21       ***The Proxy Is Materially Misleading and/or Incomplete***

23       71.    On January 12, 2011, Defendants filed the Proxy in connection with the Proposed  
 24 Acquisition and seeking, *inter alia*, the approval of Del Monte shareholders of the Merger  
 25 Agreement and the transactions contemplated thereby.  
 26  
 27  
 28

1       72. The Proxy fails to provide the Company's shareholders with material information  
 2 and/or provides them with materially misleading information thereby rendering the shareholders  
 3 unable to make an informed decision on whether to vote in favor of the Proposed Acquisition.

4       73. For example, the Proxy fails to disclose certain of the underlying methodologies,  
 5 projections, key inputs and multiples relied upon and observed by Barclays, the Company's  
 6 financial advisor, so that shareholders can properly assess the credibility of the various analyses  
 7 performed by them and relied upon by the Board in recommending the Proposed Acquisition.

8       74. In particular, the Proxy is deficient and fails to provide, *inter alia*, the following:

9           A. in the *Discounted Analyst Price Targets* prepared by Barclays: (i) the various analysts price targets; (ii) the respective reports, including dates and analysts; and (ii) a sufficient basis for using a discount rate of 9.7% to the analyst price targets reaching as high as \$22.00 per share.

10          B. in the *Selected Comparable Company Analysis* prepared by Barclays: (i) the criteria for the selection of the referenced companies in the Large-Cap Packaged Foods peers, Packaged Foods peers and Fresh Produce peers; (ii) the multiples for each of the referenced companies; (iii) the basis for selection by Barclays of a range of 6.5x to 8.0x calendar year 2011 estimated EBITDA for the Company; and (iv) the basis for applying such range to the LRP Forecasts of the Company.

11          C. in the *Discounted Equity Value Analysis* prepared by Barclays: (i) the basis for multiplying the earnings per share estimates for calendar years 2011 to 2014 based on the LRP Forecasts to price to earnings multiples of 9.9x; (ii) the basis for using the mean of 12.3x of the packaged food peer companies and not the median or various multiples for calendar year 2011 price earnings ratios in order to estimate future prices per share; and (iii) the basis for the estimated future prices per share being discounted to present value using a discount rate of 9.7%.

12          D. in the *Selected Precedent Transaction Analysis* prepared by Barclays: (i) the reasons for the data points selected; (ii) terms of the respective transactions; (iii) the enterprise value for the respective transactions; and (iv) the respective multiple for each transaction.

- 1
- 2       E. in the *Transaction Premium Analysis* prepared by Barclays: (i) the
- 3            reasons for the data points selected; (ii) a description of all of the
- 4            transactions; and (iii) the respective premiums in each transaction.
- 5
- 6       F. in the *Discounted Cash Flow Analysis* prepared by Barclays: (i)
- 7            all line items that were used in calculating the Company's free
- 8            cash flows; (ii) the free cash flows for years 2011 through 2016;
- 9            (iii) the assumptions used to determine estimated cash flows for
- 10           2015 and 2016; (iv) the basis for using a range of terminal
- 11           EBITDA multiples of 6.5x to 7.5x.; and (v) the inputs used for
- 12           calculating discount rates ranging from 7.5% to 8.5%, reflecting
- 13           Barclays' estimates of the Company's weighted-average cost of
- 14           capital, including betas, and risk rates.
- 15
- 16       G. in the *Leveraged Acquisition Analysis* prepared by Barclays: (i)
- 17           the assumptions used to obtain the capital structure of the
- 18           Company including initial leverage of funded debt to adjusted
- 19           EBITDA of 6.5x; (ii) the basis for the assumption that private
- 20           equity firms seek an equity investment that would achieve a five-
- 21           year rate of return of 18% to 20%; and (iii) the basis for a 2016
- 22           exit multiple of 7.0x to 8.0x projected 2016 EBITDA.
- 23

15       75. The Proxy also fails to disclose the underlying methodologies, key inputs and  
 16       multiples relied upon and observed by Perella, the Company's other financial advisor, so that  
 17       shareholders can properly assess the credibility of the various analyses performed by them. In  
 18       particular, the Proxy is deficient and fails to provide, *inter alia*, the following:

- 20       A. in the *Equity Research Analyst Price Targets Analysis* prepared by
- 21           Perella; (i) the various analysts' price targets; (ii) the respective
- 22           reports, including dates and analysts; and (ii) a sufficient basis for
- 23           using a discount rate of 9.3% cost of equity to the analyst price
- 24           targets reaching as high as \$22.00 per share.
- 25
- 26       B. in the *Premiums Paid Statistics Analysis* prepared by Perella: (i)
- 27           the reasons for the data points selected; (ii) a description of all of
- 28           the transactions; and (iv) the respective premiums in each
- 29           transaction.
- 30
- 31       C. in the *Precedent Transaction Analysis* prepared by Perella: (i) the
- 32           reasons for the data points selected; (ii) terms of the respective
- 33

1 transactions; (iii) the enterprise value for the respective  
 2 transactions; and (iv) the respective multiple for each transaction.

3

4 D. in the *Discounted Cash Flow Analysis* prepared by Perella: (i) all  
 5 line items that were used in calculating the Company's free cash  
 6 flows; (ii) the basis for using a range of terminal EBITDA  
 7 multiples of 6.5x to 7.5x NTM EBITDA.; and (iii) the inputs used  
 8 for calculating discount rates ranging from 7.5% to 8.5%,  
 9 reflecting Perella's estimates of the Company's weighted-average  
 10 cost of capital, including betas, and risk rates.

11 E. in the *Public Company Comparison Analysis* prepared by Perella:  
 12 (i) the reasons for the data points selected; (ii) the P/E ratio for  
 13 calendar years 2011 and 2012 for each company; and (iii) the  
 14 enterprise value as a multiple of estimated EBITDA for calendar  
 15 years 2011 and 2012 for each company.

16 F. in the *Illustrative Future Share Price Analysis* prepared by  
 17 Perella: (i) the basis for applying a multiple range of 9.5x to 12.5x  
 18 to estimated EPS for calendar years 2011, 2012 and 2013; and (ii)  
 19 the inputs used for calculating a discount rate of 9.3% (estimated  
 20 current cost of equity).

21 76. The Proxy fails to disclose the terms of Barclays participation in the financing of the  
 22 Proposed Acquisition. Additionally, the Proxy fails to disclose the substantive considerations of the  
 23 Board in connection with any potential conflict that may arise as a result of Barclays' participation  
 24 in the financing of the Proposed Acquisition.

25 77. Moreover, the Proxy fails to disclose what amount, if any, of the \$3 million in fees to  
 26 Perella are contingent upon closing of the Proposed Acquisition. Although the Proxy mentions that  
 27 in the past two years prior to the date of Perella's opinion, Perella has not received any fees from  
 28 Del Monte and yet has received fees in connection with services to the Sponsors, the Proxy fails to  
 29 disclose the services or fees provided or paid from the Sponsors or from the Company, if any, prior  
 30 to two years ago. This information is critical since a shareholder does not know whether the fees  
 31 were material or not.

32 78. By virtue of their positions as directors and senior officers of the Company, the  
 33 Individual Defendants have access to and knowledge of Del Monte's internal financial information

1 which reveals the true financial and operating condition and prospects of the Company, and have  
2 shared such information with Sponsors. Defendants are using this information to benefit  
3 themselves at the expense and to the detriment of Del Monte and the public shareholders.

4 79. Moreover, the Individual Defendants are motivated by their desire to secure personal  
5 benefits as a result of the Proposed Acquisition. Certain directors and/or officers stand to reap tens,  
6 if not hundreds, of millions of dollars of personal benefits at the expense of the Company and its  
7 public shareholders if the Merger is consummated, including the right to receive change-in-control  
8 benefits (such as the acceleration of their stock options), thus putting their own personal financial  
9 interests irreconcilably in conflict with the interests of the Company and its public shareholders.

10 80. The Del Monte Board thus acceded to the Sponsors' desire to structure a sale of the  
11 Company that unfairly benefits the Sponsors at the expense of the public stockholders.

12 81. Additionally, Barclays, the Company's financial advisor, is conflicted due to its  
13 commitment of debt financing to the Sponsors.

14 82. The Individual Defendants' actions in proceeding with the Proposed Acquisition are  
15 wrongful, unfair, and harmful to Del Monte's public stockholders, and will deny them their right to  
16 share proportionately in the true value of Del Monte's valuable assets, profitable business, and  
17 future growth in profits and earnings. The Individual Defendants have breached their fiduciary  
18 duties to Del Monte shareholders and failed to maximize shareholder value by causing the  
19 Company to enter into the Merger Agreement that provides for the sale of Del Monte at an  
20 inadequate price, and deprives Del Monte's public shareholders of maximum value to which they  
21 are entitled.

22 83. Plaintiff has no adequate remedy at law.

## **FIRST CAUSE OF ACTION**

## **Class Claim Against the Defendants for Violation of Section 14(a) of the Securities Exchange Act of 1934**

4 84. Plaintiff incorporates by reference and realleges each and every allegation set forth  
5 above, as though fully set forth herein.

6       85.     This claim is brought by plaintiff against the defendants for violations of §14(a) of  
7 the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §78a, et seq. (2008), and SEC  
8 Rule 14a-9 promulgated thereunder.

86. Defendants named in this claim disseminated the false and misleading Proxy which they knew or should have known was misleading in that it contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

87. The Proxy was prepared and disseminated by defendants named in this claim. It misrepresented and/or concealed certain material information concerning the nature of the process involved in the Proposed Acquisition and the true value of the Company. In so doing, they made untrue statements of material facts and omitted to state material facts necessary to make the statements that were made not misleading in violation of §14(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder.

88. Defendants named in this claim issued the Proxy, which was materially false and misleading. Defendants were aware of and/or had access to the true facts concerning the process involved in selling the Company and the true value of the Company. However, notwithstanding this knowledge, each of the defendants purported to and/or approved the dissemination of the false Proxy.

89. Defendants permitted the Company to be sold in an effort to aggrandize their own financial position and interests at the expense of Del Monte shareholders. By relying on the false

1 and misleading statements in the Proxy, the shareholders who are unaware of untruths, and relied  
 2 thereon, were directly and proximately harmed by the defendants' wrongful conduct. By reason of  
 3 such misconduct, the defendants are liable pursuant to §14(a) of the Exchange Act and SEC Rule  
 4 14a-9 promulgated thereunder.

5 **SECOND CAUSE OF ACTION**

6 **Class Claim Against the Individual Defendants for**  
**Violations of Section 20(a) of the Exchange Act**

7 90. Plaintiff brings this Exchange Act claim on behalf of himself individually.

8 91. Plaintiff incorporates each and every allegation set forth above as if fully set forth  
 9 herein, except for those allegations relating to class action certification standards.

10 92. The Individual Defendants acted as controlling persons of Del Monte within the  
 11 meaning of §20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers  
 12 and/or directors of Del Monte, and participation in and/or awareness of the Company's operations  
 13 and/or intimate knowledge of the false statements contained in the Proxy filed with the SEC, they  
 14 had the power to influence and control and did influence and control, directly or indirectly, the  
 15 decision making of the Company, including the content and dissemination of the various statements  
 16 which plaintiff contends are false and misleading.

17 93. Each of the Individual Defendants and Del Monte were provided with or had  
 18 unlimited access to copies of the Proxy and other statements alleged by plaintiff to be misleading  
 19 prior to and/or shortly after these statements were issued and had the ability to prevent the issuance  
 20 of the statements or cause the statements to be corrected.

21 94. In particular, each of the Individual Defendants had direct and supervisory  
 22 involvement in the day-to-day operations of the Company, and, therefore, are presumed to have had  
 23 the power to control or influence the particular transactions giving rise to the securities violations  
 24 alleged herein, and exercised the same. The Proxy at issue contains the unanimous

1 recommendation of each of the Individual Defendants to approve the Proposed Acquisition. They  
 2 were, thus, directly involved in the making of this document. In addition, as the Proxy sets forth at  
 3 length, and as described herein, the Individual Defendants were each involved in negotiating,  
 4 reviewing, and/or approving the Proposed Acquisition. The Proxy purports to describe the various  
 5 issues and information that the Individual Defendants reviewed and considered. The Individual  
 6 Defendants participated in drafting and/or gave their input on the content of those descriptions.  
 7

8 95. By virtue of the foregoing, the Individual Defendants have violated §20(a) of the  
 Exchange Act.

10 96. As set forth above, the Individual Defendants had the ability to exercise control over  
 11 and did control a person or persons who have each violated §14(a) and SEC Rule 14a-9, by their  
 12 acts and omissions as alleged herein. By virtue of their positions as controlling persons, these  
 13 defendants are liable pursuant to §20(a) of the Exchange Act. As a direct and proximate result of the  
 14 Individual Defendants' conduct, plaintiff will be irreparably harmed.

### 16 **THIRD CAUSE OF ACTION**

#### 17 **Claim for Breach of Fiduciary Duties**

18 97. Plaintiff repeats and realleges each allegation set forth herein.

19 98. The Individual Defendants have violated their fiduciary duties of care, good faith,  
 20 and loyalty owed under applicable law to the public shareholders of Del Monte and have placed the  
 21 interests of insiders ahead of the interests of Del Monte's shareholders.

22 99. As demonstrated by the allegations above, the Individual Defendants failed to  
 23 exercise the care required, and breached their duties of loyalty, good faith, care and candor owed to  
 24 the shareholders of Del Monte because, among other reasons:  
 25

26 a. they failed to properly value Del Monte;

b. they failed to take steps to maximize the value of Del Monte to its public shareholders and they took steps to avoid competitive bidding, and to give the Sponsors an unfair advantage, by, among other things, failing to adequately solicit other potential acquirers or alternative transactions;

- c. they failed to properly value Del Monte and its various assets and operations;
- d. they ignored or did not protect against the numerous conflicts of interest resulting from the directors' own interests in connection with the Proposed Acquisition; and
- e. they erected unreasonable barriers to other third-party bidders.

100. By the acts, transactions and courses of conduct alleged herein, the Individual Defendants, individually and as part of a common plan and scheme and in breach of their fiduciary duties of loyalty, good faith and due care to plaintiff and the other members of the class, have failed to adequately inform themselves about the true value of the Company and, by agreeing to the Proposed Acquisition with the Sponsors, will unfairly deprive plaintiff and other members of the class of the true value of their investment in Del Monte.

101. Del Monte shareholders will, if the Proposed Acquisition is consummated, be deprived of the opportunity for substantial gains which the Company may realize.

102. By reason of the foregoing acts, practices and course of conduct, the Individual Defendants have failed to exercise care and diligence in the exercise of their fiduciary obligations toward plaintiff and the other Del Monte public stockholders.

103. As a result of the actions of defendants, plaintiff and the other members of the class have been and will be damaged in that they have not and will not receive their fair proportion of the value of Del Monte's assets and businesses and will be prevented from obtaining appropriate consideration for their shares of Del Monte common stock.

104. Unless enjoined by this Court, the defendants will continue to breach their fiduciary duties owed to plaintiff and the other members of the class, and may consummate the Proposed Acquisition which will exclude the class from its fair proportionate share of Del Monte's valuable assets and businesses, all to the irreparable harm of the Class, as aforesaid.

105. Plaintiff and the class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can plaintiff and the class be fully protected from the immediate and irreparable injury which defendants' actions threaten to inflict.

## **FOURTH CAUSE OF ACTION**

**On Behalf of Plaintiff and the Class Against  
Parent and Merger Sub for Aiding and Abetting the  
Individual Defendants' Breaches of Fiduciary Duty**

106. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

107. Parent and Merger Sub have knowingly aided and abetted the Individual Defendants' wrongdoing alleged herein. Del Monte and Sponsors are also active and necessary participants in the Individual Defendants' plan to complete the Proposed Acquisition terms that are unfair to Del Monte shareholders, as Sponsors seek to pay as little as possible to Del Monte shareholders.

108. Plaintiff has no adequate remedy at law.

## **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands injunctive relief in his favor and in favor of the class and against defendants as follows:

- A. Declaring that this action is properly maintainable as a class action;
- B. Declaring and decreeing that the Merger Agreement was entered into in breach of the fiduciary duties of defendants and is therefore unlawful and unenforceable;

C. Enjoining defendants, their agents, counsel, employees and all persons acting in concert with them from consummating the Proposed Acquisition, unless and until the Company adopts and implements a procedure or process to obtain a merger agreement providing the best possible terms for shareholders;

D. Directing the Individual Defendants to exercise their fiduciary duties to obtain a transaction which is in the best interests of Del Monte's shareholders until the process for the sale or auction of the Company is completed and the best possible consideration is obtained for Del Monte:

E. Awarding plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

F. Granting such other and further relief as this Court may deem just and proper.

DATED: January 21, 2011

Respectfully submitted,

~~KAPLAN FOX & KUSHIMER LLP~~

By:

Laurence D. King (SBN 206423)  
Linda M. Fong (SBN 124232)  
350 Sansome Street, Suite 400  
San Francisco, CA 94104  
Telephone: 415-772-4700  
Facsimile: 415-772-4707  
[lking@kaplanfox.com](mailto:lking@kaplanfox.com)  
[lfong@kaplanfox.com](mailto:lfong@kaplanfox.com)

Joshua M. Lifshitz  
Peter D. Bull  
**BULL & LIFSHITZ, LLP**  
18 East 41st Street  
New York, NY 10017  
Telephone: (212) 213-6222  
Facsimile: (212) 213-9405  
[counsel@nyclasslaw.com](mailto:counsel@nyclasslaw.com)

*Attorneys for Plaintiff Dallas Faulkner*

**CERTIFICATE OF NAMED PLAINTIFF**

I, Dallas Faulkner, certify that:

1. I have reviewed the complaint and authorized its filing or the filing of a Motion for Lead Plaintiff on my behalf by Bull & Lifshitz, LLP.
2. I did not purchase the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in any private action arising under this title.
3. I am willing to serve as a representative party on behalf of a class and will testify at deposition and trial, if necessary.
4. My transactions in Del Monte Foods Co. securities that are the subject of this litigation during the class period set forth in the complaint are as follows:

Security	Date of Transaction	Amount of Shares Stating Whether Purchased(P) or Sold(S)	Price Per Share
DLM	2/5/99	P-80	\$15.62

1. I have not served as or sought to serve as a representative party on behalf of a Class under this title during the last three years.

2. I will not accept any payment for serving as a representative party, except to receive my pro rata share of any recovery or as ordered or approved by the court including the award to a representative of reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

The foregoing are, to the best of my knowledge and belief, true and correct statements.



18.JW/11

DALLAS FAULKNER